No. 77-971

In the Supreme Court of the United States

OCTOBER TERM, 1977

STATE OF NORTH CAROLINA EX REL.
SARAH T. MORROW, ET AL., APPELLANTS

v.

JOSEPH A. CALIFANO, SECRETARY OF HEALTH,
EDUCATION, AND WELFARE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

MOTION OF THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE TO AFFIRM

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The Solicitor General, on behalf of the Secretary of Health, Education, and Welfare, moves that the judgment of the district court be affirmed.

OPINION BELOW

The opinion of the district court (J.S. App. a-1 to a-10) is unreported.

JURISDICTION

The judgment of the district court was entered on September 30, 1977. A notice of appeal to this Court

was filed on November 9, 1977 (J.S. App. b–1 to b–5), and the jurisdictional statement was filed January 6, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

QUESTION PRESENTED

Whether the National Health Planning and Resource Development Act of 1974, which provides for the payment of certain federal health care grants to the states on the condition that the states participate in an integrated health system plan, is a proper exercise of Congress' spending power.

STATEMENT

1. In 1974, Congress enacted the National Health Planning and Resources Development Act of 1974 (the Health Planning Act), 88 Stat. 2226, 42 U.S.C. (Supp. V) 300k to 300t, which provides for the creation of a national system of health care planning and development. Congress contemplated that the states would establish health planning agencies devoted to improving the accessibility and quality of health services, while restraining increases in health costs and preventing unnecessary duplication of health care resources. 42 U.S.C. (Supp. V) 300*l*–2. The Health Planning Act calls on each state health agency to administer a state "certificate of need" program. Under that program, the state agency would review all new institutional health services proposed for the state and would ensure that "only those services, facilities, and organizations found to be needed shall be offered or developed in the State." 42 U.S.C. (Supp. V) 300m–2(4)(B).

The Act gave the states until September 30, 1980, to elect or decline to participate in the national system described in the Act. States electing not to participate would not be eligible for federal grants under the Act and under related federal health programs. 42 U.S.C. 300m(d).[1]

2. On April 27, 1976, appellant North Carolina filed this action in the United States District Court for the Eastern District of North Carolina, challenging the constitutionality of portions of the Health Planning Act.[2] North Carolina contended that the comprehensive health planning system—and the certificate of need requirement in particular—violate the State's rights under the Tenth Amendment and the Guaranty Clause of Article IV, Section 4 of the Constitution. North Carolina further argued that the threatened loss of federal funds under the Act and under pre-existing Acts if the State should decline to participate in the Health Planning Act amount to "coercion" and therefore exceed the legitimate scope of Congress' spending power under Article I, Section 8, clause 1 of the Constitution.

North Carolina argued that its position was peculiarly difficult, because the Supreme Court of North Carolina had held that the state constitution pro-

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[1] The related programs are the Community Mental Health Centers Act, as added, 89 Stat. 309–333, 42 U.S.C. (Supp. V) 2689–2689aa, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, 84 Stat. 1848, and other portions of the Public Health Service Act, 58 Stat. 682, as amended, 42 U.S.C. (and Supp. V) 201 *et seq.*

[2] The other appellants, including the State of Nebraska, later intervened.

hibited the legislature from passing a "certificate of need" statute of the kind envisaged by the Health Planning Act. *In the Matter of Certificate of Need for Aston Park Hospital, Inc.,* 282 N.C. 542, 193 S.E. 2d 729. Unless the state supreme court reversed itself on the issue, the state argued, an amendment of the state constitution would be essential to enable North Carolina to participate in the Health Planning Act program.

The district court rejected appellants' arguments, holding that the Health Planning Act is a permissible exercise of Congress' spending power, and that it does not violate either the Tenth Amendment or the Guaranty Clause. The court observed that Congress' effort to establish and pay for a national health program is a legitimate national purpose. It stated (J.S. App. a–5):

> Without question Congress in making grants for health care to the States, should be vitally concerned with the efficient use of the funds it appropriated for that purpose. It had a perfect right to see that such funds did not cause unnecessary inflation in the cost of health costs to the individual patient. It certainly had the power to attach to its grants conditions designed to accomplish that end.

Although the federal "certificate of need" program applies to private as well as public health care facilities, the court held that inclusion of private facilities is justified because, "if only public construction were covered by the certificate of need program, the public interest in avoiding unnecessary increases

in health care [costs] by reason of the addition of unneeded additional facilities could be thwarted by private construction" (J.S. App. a–8).

The district court rejected on several grounds North Carolina's argument that the use of the spending power in the Health Planning Act is unconstitutional because it "coerces" the State into participating in the health planning program. First, relying on *Steward Machine Co.* v. *Davis,* 301 U.S. 548, the court noted (J.S. App. a–5 to a–6):

> [W]henever the condition attached by Congress to an appropriation grant available to the States relates to a "legitimately national" purpose, inducement or temptation to conform does not go beyond the bounds of the federal government's legitimate spending power and is not coercion in any constitutional sense.

Second, the court observed that the amount of federal money that North Carolina would be denied by electing not to participate in the program would be less than 50 million dollars per year. In light of the state's annual revenues of 3.1 billion dollars, the court concluded (J.S. App. a–7) that the threat of loss of that sum "could hardly be described as 'catastrophic' or 'coercive.'"

Finally, the court held that the North Carolina court's ruling that participation in the federal health program would violate the North Carolina Constitution does not render the Health Planning Act unconstitutionally coercive. "The validity of the power of the federal government under the Constitution to im-

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pose a condition on federal grants made under a proper Constitutional power," the court wrote, "does not exist at the mercy of the State Constitutions or decisions of State Courts" (J.S. App. a–7).

ARGUMENT

1. The Health Planning Act is one of many federal statutes that condition the disbursement of federal funds on compliance with federal standards. Many of these statutes make payment of federal funds conditional on the states' agreement to comply with a detailed regulatory plan that may require legislative action by the State.[3] Such statutes have long been held to be permissible exercises of the spending power, and

[3] See, *e.g.*, the Federal Aid Highways Act, as added, 88 Stat. 2286, 23 U.S.C. (Supp. V) 154 (conditioning payment of all federal highway aid to a State on the State's agreement to enact 55 miles per hour speed limits on all highways within its jurisdiction); Title XIX of the Social Security Act, as added, 79 Stat. 343, and amended, 42 U.S.C. (and Supp. V) 1396 *et seq.* (conditioning payment of Medicaid funds to a State on the enactment of a State plan, found satisfactory by the Secretary of HEW, imposing various administrative requirements on the State's political subdivisions); Title VI of the Civil Rights Act of 1964, 78 Stat. 252, as amended, 42 U.S.C. (and Supp. V) 2000d *et seq.* (in conjunction with 45 C.F.R. Part 80, conditioning all federal aid to education on the State's submission of a comprehensive desegregation plan found satisfactory by the Secretary of HEW); the Federal Water Pollution Control Act of 1972, as added, 86 Stat. 816, 33 U.S.C. (Supp. V) 1251 *et seq.* (conditioning federal appropriations to the states for pollution control and construction of waste treatment and water purification facilities on the states' adoption of plan and certificate procedures found satisfactory by the Administrator of the Environmental Protection Agency); Title IV–A of the Social Security Act, 49 Stat. 627, 628, as amended, 42 U.S.C. (and Supp. V) 602, 603 (conditioning federal appropriations for aid to families with dependent children on the states' enactment of a detailed

appellants have not cited a single instance in which any such "conditional" statute has been held unconstitutional.

Seeking to avoid the force of an unbroken line of precedent against their position,[4] appellants contend that the Health Planning Act exceeds the limits of the spending power because it constitutes coercion rather than inducement (J.S. 8); because health care traditionally has been regarded as an area of particular state and local concern (J.S. 8–9); because the "penalty" prescribed by the Act bears little or no rational relationship to the Act's regulatory objective (J.S. 9); and because there are less drastic methods of dealing with health cost control than those prescribed by the Health Planning Act (J.S. 9–10). None of these contentions is persuasive.

a. Appellants' theme that the Health Planing Act exposes the states to "coercion" substitutes assertion

administrative plan approved by the Secretary); the Coastal Zone Management Act of 1972, as added, 86 Stat. 1280, 16 U.S.C. (1976 ed.) 1451 *et seq.* (conditioning appropriation of federal funds to the States for coastal zone management on the adoption by the States of a comprehensive planning program approved by the Secretary of Commerce).

[4] See, *e.g.*, *King* v. *Smith*, 392 U.S. 309, 333 n. 34; *Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275, 295; *Oklahoma* v. *Civil Service Commission*, 330 U.S. 127, 143; *Helvering* v. *Davis*, 301 U.S. 619; *Steward Machine Co.* v. *Davis*, 301 U.S. 548; *Massachusetts* v. *Mellon*, 262 U.S. 447, 480.

Similarly, the Health Planning Act has been upheld in each of the other cases in which it has been challenged as unconstitutional. See *Goodin* v. *Oklahoma*, 436 F. Supp. 583 (W.D. Okla.); *National Association of Regional Medical Counsels* v. *Califano*, D. D.C., Civ. No. 76–0369, decided June 8, 1976, appeal pending, C.A.D.C., No. 76–2002; *King County* v. *Califano*, W.D. Wash., C77–723V, decided March 6, 1978.

for analysis. To be sure, by declining to participate in the national health planning program, North Carolina would become ineligible for certain federal health care grants. But, as the district court pointed out, the amount of money at stake, even on the state's estimate, is small in comparison with the state's annual revenues.

For years, more than a dozen states declined to participate in the Medicaid program, which involves far more federal money than the Health Planning Act. Indeed, the State of Arizona still does not participate in the Medicaid program, presumably because of its choice not to accept the federal conditions. *Report of the Staff to the Senate Committee on Finance, Medicare and Medicaid, Problems, Issues and Alternatives* (1970). Although North Carolina would prefer to enjoy federal health funds without having to accept Congress' conditions, the Health Planning Act cannot fairly be said to have deprived the state of any choice in this matter. See *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 589–591. The fact that the choice involves a selection between ends valued by appellants, and the sacrifice of one to obtain more of the other, may make the choice hard, but it is not "coercive" to put someone to a hard choice. See *Bordenkircher* v. *Hayes*, No. 76–1334, decided January 18, 1978; *McGautha* v. *California*, 402 U.S. 183, 208–220.

b. Appellant's contention that public health is a field traditionally left to local regulation is undercut by their repeated emphasis on the pervasive and essential role played by federal funding in the health

care field. The federal government, through Medicare, Medicaid, and other programs, is a substantial participant in health service provision, and appellants do not challenge these programs. If appellants suggest that health care should be paid for by Congress but regulated by the states,[5] we submit that nothing in the Constitution requires Congress to abandon its own attempts to ensure the efficient use of federal monies. The Health Planning Act was designed to maximize the effectiveness of federal funding, while curbing the rapid increase of health care costs that had been fueled in part by "[t]he massive infusion of Federal funds into the existing health care system." 42 U.S.C. (Supp. V) 300k(a)(2). See S. Rep. No. 93–1285, 93d Cong., 2d Sess 40 (1974); H.R. Rep. No. 93–1382, 93d Cong., 2d Sess. 31 (1974).[6]

c. Congress' conclusion that a comprehensive approach to health care is needed to achieve these goals answers appellants' contentions that withholding federal funding for a variety of health care programs

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[5] Appellants' assertion that states are "fully capable of regulating" the provision of health care (J.S. 8; footnote omitted) conflicts with their own assertion that North Carolina is forbidden by its constitution to regulate health care in certain ways (J.S. 4–5, 11).

[6] In the 1977 fiscal year alone, federal health care spending was estimated to be $51.4 billion, or 12.5 percent of all federal expenditures. The federal government assumes almost one-third of all health-related costs in the country. Its share of total health spending has more than doubled since 1965, while the state and local governments' share has remained about the same. Moreover, inflation in health care costs has significantly outrun the Consumer Price Index, with hospital costs leading the way. Office of Management and Budget, *Special Analysis Budget of the United States Government Fiscal Year 1978*, 202–228.

is unrelated to the purposes of the Health Planning Act, and that less drastic means could have been devised to achieve the same goals. Appellants appear to assume that the provision of the Health Planning Act denying federal funding for various pre-existing health programs in non-complying states was intended as a fitting "punishment" for "misconduct". Quite the contrary, the Health Planning Act simply followed the lead of a series of federal statutes designed to assure that federal funds would not continue to be used to "pay for costly services which the planning process determines are unneeded." S. Rep. No. 93–1285, *supra,* at 7; see 42 U.S.C. (Supp. V) 300k (a) (2).

Moreover, the three federal grant statutes referred to in the Health Planning Act were selected because they are required to be administered by agencies established under the Act. 42 U.S.C. (Supp. V.) 300*l*–2(e)(1)(A)(i), 300m–(c)(6). A state's election not to participate in the Health Planning program means that the state will lack the mechanism that Congress deemed necessary to the efficient expenditure of those federal funds. Accordingly, the "conditions" of the Health Planning Act are precisely tailored to its purpose to spend designated monies efficiently to achieve specified purposes; the means used for the exercise of the spending power are "appropriate and plainly adapted to the permitted end." *Oklahoma* v. *Civil Service Commission,* 330 U.S. 127, 143; *United States* v. *Darby,* 312 U.S. 100, 124.

d. Appellants highlight their "coercion" argument with the assertion that the Act's certificate of need

requirement is "repugnant to [North Carolina's] constitution" (JS. 2). That assertion, however, may be subject to question. The Supreme Court of North Carolina held a previous certificate of need program contrary to the state constitution, but the current federal requirements for certificates of need programs (42 Fed Reg. 4022–4032 (1977)) leave the states so much flexibility in designing their programs that it is entirely possible a program could be devised in North Carolina that would satisfy both the Health Planning Act and the state constitution.

In any event, it should make no difference whether a state changes its constitution or simply its laws in order to qualify for grants offered by Congress in the exercise of its spending power. The central point is that a state may elect either the money (with its conditions) or the status quo. It is irrelevant, so far as the United States Constitution is concerned, whether the state rule to be altered is constitutional, statutory, decisional, or simply one of custom. *Townsend* v. *Swank,* 404 U.S. 282, 286; *Carleson* v. *Remillard,* 406 U.S. 598, 601.[7]

e. Appellants repeatedly refer to *National League of Cities* v. *Usery,* 426 U.S. 833, and *Environmental Protection Agency* v. *Brown,* 431 U.S. 99, which they contend establish limits on the power of Congress to set.

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[7] Other state constitutions have not been found to be inconsistent with the establishment of certificate of need programs. See, *e.g.*, *Goodin* v. *Oklahoma, supra; Merry Heart Nursing and Convalescent Home, Inc.* v. *Dougherty,* 330 A. 2d 370 (N.J. App.); *Simon* v. *Cameron,* 337 F. Supp. 1380 (C.D. Cal.); *Attoma* v. *State Department of Social Welfare,* 26 App. Div. 2d 12, 270 N.Y.S. 2d 167.

rules binding on the states. The statutes involved in those cases, however, were not "conditional" exercises of the spending power; they imposed mandatory requirements on the states. The analysis in *National League of Cities* and in the lower court opinions in *Brown* and its companion cases is therefore not applicable here. As this Court has recently observed, governmental power "to encourage actions deemed to be in the public interest is necessarily far broader" than the government's power "to impose its will by force of law." *Maher* v. *Roe,* 432 U.S. 464, 476. The Health Planning Act simply encourages state action that Congress believes worth paying for.[8] It does not command the states; it does not threaten their separate or independent existence. It therefore does not exceed the limitations on Congress' power identified in *National League of Cities.*

2. Appellants also argue (J.S. 10–12) that the Health Planning Act violates the Guaranty Clause of Article IV, Section 4 of the Constitution. The short answer to this contention is that this Court has long held that questions arising under the Guaranty Clause are political in character and therefore not justiciable. *Baker* v. *Carr,* 369 U.S. 186, 218–232; *Highland Farm Dairy* v. *Agnew,* 300 U.S. 608; *Ohio* v. *Akron Park District,* 281 U.S. 74; *Pacific States Telephone & Telegraph Co.* v. *Oregon,* 223 U.S. 118; *Luther* v. *Borden,* 7 How. 1.

[8] In *Buckley* v. *Valeo,* 424 U.S. 1, 57 n. 65, 97–104, this Court drew a parallel distinction, holding that although the government could not forbid a candidate from spending funds, it could use its spending power to induce him not to spend those funds.

There would be no ground for concern here even if the issue were justiciable. Congress has designed the cooperative regulatory scheme under the Health Planning Act in a manner that minimizes interference with state autonomy. The Act induces states to act in particular ways, but the regulatory program it envisages no more denies any states a republican form of government than does the regulation states already provide (J.S. 8–9) or the displacement of state choices compelled by the Supremacy Clause. See, *e.g., Ray* v. *Atlantic Richfield Co.,* No. 76–930, decided March 6, 1978 (federal tanker regulation preempts state laws, even though that annuls important state policies).

Moreover, although the Act sets out broad criteria for an integrated system of health care planning and review, the Secretary is not involved in the substantive decision-making or staffing of the locally controlled health systems agencies, and the state governors are given nearly absolute discretion to designate the state agency of their choice to administer the state administrative programs. 42 U.S.C. (Supp. V) 300m (b)(1). The Secretary has no control over the implementation of the state plans and may not interfere with the state agencies' substantive determinations whether to issue particular certificates of need. The Act allows the states' governors broad discretion to designate existing state agencies to take charge of the certificate of need program. 42 U.S.C. (Supp. V) 300m(b)2. In light of these provisions, appellants' concern that the Act denies the states a republican form of government is unwarranted.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

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MARCH 1978.

U.S. GOVERNMENT PRINTING OFFICE: 1978